

SURPRISE VENTURE ASSOCIATES

IBLA 71-116

Decided August 1, 1972

Appeal from decision by the Arizona land office rejecting petition (A 5392) for restoration of reclamation withdrawn lands to location and entry under the mining laws.

Set aside and remanded.

Mining Claims: Withdrawn Land -- Withdrawals and Reservations:  
Reclamation Withdrawals -- Withdrawals and Reservations:  
Revocation and Restoration

An application under the Act of April 23, 1932, 43 U.S.C. § 154, for restoration to mineral location and entry of reclamation withdrawn lands will ordinarily be rejected when the Bureau of Reclamation has recommended against it where there remains a possibility of the location of project features in the future, even though there are no project features on the land at the time of filing the petition for restoration.

Mining Claims: Withdrawn Land -- Withdrawals and Reservations:  
Reclamation Withdrawals -- Withdrawals and Reservations:  
Revocation and Restoration

Where an applicant under the Act of April 23, 1932, 43 U.S.C. § 154, for restoration to mineral location and entry of reclamation withdrawn lands alleges that the lands contain valuable minerals, which can be removed before a proposed dam is completed, and that it is willing to operate in any way as directed for the protection of the interest of the United States, the case will be remanded for a mineral examination and report to determine whether the alleged mineral deposits are of sufficient value to make mining operations profitable.

APPEARANCES: Saunie Gravely on behalf of Surprise Venture Associates.

## OPINION BY MRS. LEWIS

Surprise Venture Associates appealed to this Board from a decision by the Arizona land office rejecting its petition for restoration to mining location and entry of sections 8, 9, 16, and 17, T. 2 N., R. 7 E., G.&S.R.M., Arizona, which lands, except for the SE 1/4 of section 17, are embraced in first form reclamation withdrawals for the Salt River Project, and also lie within the Tonto National Forest. The petition was filed pursuant to the Act of April 23, 1932, 47 Stat. 136; 43 U.S.C. § 154, and the regulations thereunder contained in 43 CFR Subpart 3816.

The petition was rejected for the reason that the Bureau of Reclamation reported that its engineering and design studies for the Orme Dam and Reservoir have not progressed to the point where the ultimate requirements for the land can be determined.

Saunie Gravely, on behalf of Surprise Venture Associates, states in his appeal that they own mining claims within the sections named, which were located for a tungsten deposit in 1956, and that they did not discover that the claims were located on withdrawn lands until 1969. He maintains that they can remove the ore before the dam is completed without interfering with any proposed Government project; that they are willing to operate in any fashion, as directed by any department of the government, to prevent water and air pollution; and that they are willing to sign an agreement of "no-recourse" in the event they do cause a situation to warrant them to cease and desist their operations.

In connection with this appeal, we have obtained a current report from the Bureau of Reclamation in which the Bureau adheres to its original recommendation that the petition be denied. In his letter of July 12, 1972, the Commissioner of that Bureau recommended that no mining operations be permitted on the lands until the construction of the dam has been completed and future uses of the area by the United States and the public are definitely determined. He also states that the Office of Hearings and Appeals might wish to consider the advisability of asking the Bureau of Land Management, with the cooperation of the Forest Service, to investigate the value of the alleged mineral deposits to determine whether the deposits are of sufficient value to make mining operations profitable.

The authority conferred upon the Secretary by the Act of April 23, 1932, supra, is discretionary, and it is to be exercised only when the rights of the United States will not be prejudiced thereby. The Act reads, in pertinent part:

Where public lands of the United States have been withdrawn for possible use for construction purposes under the Federal reclamation laws, and are known or believed to be valuable for minerals and would, if not so withdrawn, be subject to location and patent under the general mining laws, the Secretary of the Interior, when in his opinion the rights of the United States will not be prejudiced thereby, may, in his discretion, open the land to location, entry, and patent under the general mining laws \* \* \*. (Emphasis supplied.)

The Department has held that an application for the restoration to mineral location and entry is properly rejected when the Bureau of Reclamation has recommended against such action, Walker Engineering Corporation, A-29833 (November 26, 1963); and where there remains a possibility of the location of project features in the future, even though there are no project features on the land at the time the petition for restoration is filed. Clyde A. Morgan, Walter F. Sager, A-27489 (October 24, 1957).

Also, the Forest Service, U.S. Department of Agriculture, has informed us that the withdrawal should remain in effect in this area, as the appellant's mining claims are located just above the proposed maximum high water line of the proposed Orme Reservoir, and when the reservoir is constructed it will be of prime importance for water oriented recreation activities for the general public and a mining operation would not be compatible with this type of recreation area. 1/

The Act of April 23, 1932, supra, requires, as a condition to restoration, that the lands are "known or believed to be valuable for minerals." Although appellant alleges that the lands are valuable for tungsten and has submitted two assay reports showing certain mineralization of the lands, the evidence presented is not conclusive that the lands are important for their mineral content. See Clyde A. Morgan, Walter F. Sager, supra.

We note further that the Act permits mining rights under certain conditions on land withdrawn under the Federal Reclamation laws. In view of Mr. Gravely's contention that they can remove the ore before the dam is completed without interfering with any Government project and that they are willing to operate in any way as directed for the protection of the interest of the United States, we are remanding the

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1/ The withdrawal by the Bureau of Reclamation which prohibits mining herein was not made in contemplation of Forest Service needs. Therefore, the interest of the Forest Service in the matter is prospective.

case to the Bureau of Land Management with instructions that it cause a mineral examination to be made of the lands to determine whether the alleged mineral deposits are of sufficient value to make mining operations profitable.

The Bureau of Land Management will forward the mineral examination report to the Bureau of Reclamation for its consideration and recommendations before issuing a decision in accordance with 43 CFR 3816.3.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is set aside and the case is remanded to the Bureau of Land Management for further action consistent herewith.

Anne Poindexter Lewis  
Member

We concur:

Edward W. Stuebing  
Member

Douglas E. Henriques  
Member

